

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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AT RICHMOND, AUGUST 9, 2007

2007 108 - 9 2 3: 22

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2007-00066

For a certificate of public convenience and necessity to construct and operate an electric generation facility in Wise County, Virginia, and for approval of a rate adjustment clause under §§ 56-585.1, 56-580 D, and 56-46.1 of the Code of Virginia

ORDER FOR NOTICE AND HEARING

On July 13, 2007, Virginia Electric and Power Company ("Virginia Power" or "Company") filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity to construct and operate what the Company describes as a carbon capture compatible, clean-coal powered electric generation facility in Wise County, Virginia, and for approval of a rate adjustment clause under §§ 56-585.1, 56-580 D, and 56-46.1 of the Code of Virginia ("Code"). As explained in the Company's application, the current proposal to construct and operate a coal-fired generation facility in southwest Virginia is related to legislation first enacted by the General Assembly in 2004 to encourage the development of a coal-fired generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth. Application at 2-3.

By way of background, in 2004 the General Assembly amended the Virginia Electric Utility Restructuring Act (Chapter 23, Title 56, § 56-576 *et seq.* of the Code) by enacting § 56-585 G of the Code.¹ The statute was enacted "[t]o ensure a reliable and adequate supply of

¹ During the 2007 session of the Virginia General Assembly, § 56-585 G was repealed by identical Chapters 888 and 933 of the 2007 Acts of Assembly.

electricity, and to promote economic development" in the coalfield region of the Commonwealth. The statute further provided that the construction of a "coal-fired generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth. . . is in the public interest."

After the enactment of § 56-585 G of the Code, the Company filed a petition on June 30, 2006, seeking certain initial determinations under the statute. The Company emphasized that it was not requesting approval to construct a generating facility in its filing. Rather, the Company requested that the Commission decide prerequisite issues that would facilitate the Company's decision-making process when determining whether to build the type of generating facility envisioned by § 56-585 G of the Code. Specifically, the Company requested that the Commission: (1) approve the calculation and implementation of an Allowance for Funds Used During Construction ("AFUDC") rate for the period during the planning and construction of a coal-fired plant pursuant to § 56-585 G; (2) approve a "risk premium" during the commercial operation of the facility; and (3) grant the Company exemptions from certain portions of the electric utility bidding rules found at 20 VAC 5-301-10 *et seq.* ("Bidding Rules").

By Final Order dated November 1, 2006, in Case No. PUE-2006-00075, the Commission ruled on the Company's petition and found that: (1) the "construction of a coal-fired generation facility pursuant to the terms of § 56-585 G of the Code that utilizes Virginia coal and is located in the coalfield region of the Commonwealth is in the public interest;" (2) "the Company may accrue AFUDC [under the same methodology and rate it is accruing such costs in other jurisdictions]. . . to preserve its right to recover such costs pursuant to the terms of § 56-585 G of the Code;" (3) "the Company shall file a petition for approval to construct a facility under § 56-585 G. . . [by November 1, 2007] or cease booking AFUDC;" and (4) "the Commission

may grant exemptions from any or all of the Bidding Rules for a proposed coal-fired generation facility under § 56-585 G of the Code." Final Order at 11.

Subsequent to the Commission's Final Order in Case No. PUE-2006-00075, the Virginia General Assembly repealed § 56-585 G of the Code and enacted § 56-585.1, effective July 1, 2007, in identical Chapters 888 and 933 of the 2007 Acts of Assembly. Section 56-585.1 A 6 of the new statute retains the General Assembly's previous policy declaration in § 56-585 G that the construction of a coal-fired generating facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth is in the public interest. The new statute also allows the Company to petition the Commission for approval of such a coal-fired generating facility before or after the termination of capped rates, and grants the Company "the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity." Code § 56-585.1 A 6. The incentive created by the statute to encourage the construction of a carbon capture compatible, clean-coal powered generating facility is a 200 basis point increase over the Company's general rate of return to be applied during the construction phase and the first portion of the facility's service life, ranging between 10 and 20 years. *Id.*

The Company's current application seeks a certificate of public convenience and necessity authorizing the construction and operation of what the Company describes as a carbon capture compatible, clean-coal powered electric generation facility in Wise County, Virginia, and approval of a rate adjustment clause ("Rider S") under §§ 56-585.1, 56-580 D, and 56-46.1 of the

Code. The proposed facility will produce 585 megawatts ("MW") of generating capacity and will cost approximately \$1.62 billion, including the interconnection facilities necessary to interconnect the plant to PJM Interconnection, LLC.² Although carbon capture technology is not commercially available at the present time, Virginia Power represents that the plant will be built so that it will be compatible with carbon capture technology when such technology becomes commercially available. The projected in-service date of the facility is 2012.

The specific configuration of the generating facility will consist of two circulating fluidized bed ("CFB") boilers supplying steam to a single steam generator. The boilers will be equipped with post-combustion dry polishing scrubbers, selective non-catalytic reduction for nitrogen oxide control, and fabric filters for particulate and mercury control. The application represents that CFB technology, combined with post-combustion controls, has low emissions of sulfur dioxide, nitrogen oxide, particulate matter, and mercury.

According to the application, the Company anticipates that fuel supply for the generating facility will consist primarily of run-of-mine coal from various mines in the coalfield region of Virginia. The CFB technology will also reportedly allow for the supplemental use of opportunity fuels such as waste coal and biomass (wood waste) for up to 20% of the facility's output. The Company's application further states that "[r]enewable fuel use will lower emission levels and the consuming of waste coal will result in the environmental benefit of removing potential acid mine run-off sources into local streams and rivers." Application at 5.

The Company's application alleges the proposed generating facility is required by the public convenience and necessity and is in the public interest because the facility will enable the Company to provide customers with a reliable and adequate supply of electricity and the facility

² The request for approval of the interconnection facilities will be the subject of a separate application pursuant to § 56-46.1 of the Code. Application at 6, footnote 2.

will not have a material impact upon the reliability of electric service provided by any regulated utility. The application further states that the proposed facility will help the Company meet its projected native load requirements and will promote economic development in southwest Virginia consistent with the requirements imposed for certification by the Code. Application at 9-10.

The Company further requests that the Commission approve its proposed Rider S, which will allow the Company to recover AFUDC, planning, development and construction costs, and infrastructure costs associated with its proposed coal-fired generating facility. The AFUDC recovered through Rider S would include the financing costs accrued since the inception of the project through December 31, 2008 - the end of the capped rate period. The Company proposes a return on equity rate of 13.75% for purposes of calculating its AFUDC, which consists of an 11.75% return on equity determined by the Company using the method prescribed by § 56-585.1 A 2 of the Code, plus the additional 200 basis point incentive premium granted by § 56-585.1 A 6 of the Code for carbon capture compatible, clean-coal powered generating facilities. The Company's proposed Rider S would also allow the Company to recover, effective January 1, 2009, a return on the Company's projected construction work in progress ("CWIP") expected to be incurred during calendar year 2009.

The Company also proposes that a 13.75% return on equity be applied on the Company's plant investment during the first 20 years of the facility's service life as authorized by § 56-585.1 A 6 of the Code. All costs associated with the construction of the facility, other than AFUDC and a return on CWIP, will be recovered only when the plant is placed in service.

The Company also seeks a Commission declaration that the Bidding Rules have no application to this proceeding or, in the alternative, requests that the Commission grant it

exemptions from the Bidding Rules. In its application, the Company notes that unlike § 56-585 G of the Code, which was repealed effective July 1, 2007, § 56-585.1 A 6 does not have a specific reference requiring the Commission to consider the Bidding Rules when evaluating the proposed facility. The Company's application further states that although "[t]he General Assembly was aware of the Final Order [in Case No. PUE-2006-00075] and that the Bidding Rules were a potential issue in the construction of the Coal Plant," it did not include any reference to the Bidding Rules in § 56-585.1 A 6 of the Code. Application at 7. Accordingly, the Company suggests that the General Assembly's decision to exclude any reference to the Bidding Rules in the new legislation could be interpreted to mean that the Bidding Rules do not apply to the proposed generating facility. Nevertheless, if the Commission holds that the Bidding Rules apply to the proposed generating facility, the Company requests that it be granted exemptions from certain aspects of the Bidding Rules so it can proceed with the construction of the proposed generating facility.

Finally, § 56-585.1 A 7 of the Code states that the "Commission's final order regarding any petition filed pursuant to [§ 56-585.1 A 6] shall be entered not more than . . . nine months . . . after the date of filing of such petition."

NOW THE COMMISSION, upon consideration of the application, is of the opinion and finds that this matter should be docketed, that a procedural schedule should be established, and that the Company should give notice to the public of its application, all as prescribed below. We further recognize that § 56-585.1 D of the Code authorizes the Commission to determine the reasonableness or prudence of costs incurred or projected to be incurred by the Company in connection with the proposed coal-fired generating facility, and requires that such determination be consistent with the provisions of Chapter 10, Title 56, § 56-232 *et seq.* of the Code. In this

regard, § 56-234.3 of the Code has long guided this Commission in determining the reasonableness of jurisdictional utilities' proposed construction of new generating facilities having a designed capacity of 100 MWs or greater. That statute further requires the Commission to find that generation facilities proposed for construction are "necessary to enable the public utility to furnish reasonably adequate service and facilities at reasonable and just rates." We will therefore direct the Company to (1) supplement its application to the extent necessary to enable review of the costs the Company expects to incur in connection with this project under § 56-234.3 of the Code or (2) file a memorandum explaining why the Company does not believe such supplementation to its application is necessary.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) The Company's application is docketed and assigned Case No. PUE-2007-00066.

(2) A copy of the application and this Order for Notice and Hearing, as well as other documents now or hereafter filed in this matter, shall be available for public inspection in the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. A copy of the application may also be obtained by requesting a copy from counsel for the Company, Edward L. Flippen, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. Upon receipt of a request for a copy of the application, the Company shall serve a copy of the same upon the requesting party within three (3) business days of such request. If acceptable to the requesting party, the Company may provide the application by electronic means. In addition, copies of the Commission's Order For Notice and Hearing and other Orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the

Commission and the statutes it administers, may be viewed on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

(3) A public hearing shall be convened on January 8, 2008, at 10:00 a.m. in the Commission's Courtroom located on the Second Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence in this docket. Any person not participating as a respondent as provided for below may give oral testimony concerning this case as a public witness at the hearing. Public witnesses desiring to make statements at the public hearing need only appear in the Commission's Second Floor Courtroom in the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

(4) Pursuant to § 12.1-31 of the Code and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, the Commission assigns a Hearing Examiner to consider any motion for protective order and to rule on any discovery matter that may arise in this proceeding.

(5) On or before September 10, 2007, the Company shall (i) supplement its application to the extent necessary to enable review of the reasonableness and prudence of the costs the Company expects to incur in connection with its proposed generating facility under § 56-234.3 of the Code or (ii) file a memorandum explaining why such supplementation to its application is not necessary. If the Company files a memorandum stating that such supplementation is not necessary, the Staff and respondents may file a response on or before September 20, 2007. The Company may file, on or before September 27, 2007, any reply it may have to the responses filed by the Staff or respondents.

(6) Any interested person may participate as a respondent in this proceeding by filing, on or before October 1, 2007, an original and fifteen (15) copies of a notice of participation with the Clerk, State Corporation Commission, c/o Document Control Center, P.O Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of the notice of participation on counsel to the Company at the address set forth in Ordering Paragraph (2) above. Pursuant to Rule 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Interested parties shall refer in all of their filed papers to Case No. PUE-2007-00066.

(7) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order for Notice and Hearing, a copy of the application, and all materials filed by the Company with the Commission, unless these materials have already been provided to the respondent.

(8) On or before November 2, 2007, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (6) above, an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall simultaneously serve copies of the testimony and exhibits on counsel to the Company at the address set forth in Ordering Paragraph (2) above and all other respondents. The respondent shall comply with the Commission's Rules of Practice and Procedure, including: 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(9) On or before December 14, 2007, any interested person may file with the Clerk of the Commission, at the address set forth in Ordering Paragraph (6) above, written comments in this proceeding and shall simultaneously serve a copy on counsel to the Company at the address set forth in Ordering Paragraph (2) above. Any interested person desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(10) On or before November 28, 2007, the Commission's Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits regarding the Company's application and shall promptly serve a copy on counsel to the Company and all respondents.

(11) On or before December 19, 2007, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits that the Company expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff and shall on the same day serve one (1) copy on Staff and all respondents.

(12) On or before September 10, 2007, the Company shall cause the following notice to be published as display advertising (not classified) in newspapers of general circulation throughout the Company's service territory within the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF VIRGINIA ELECTRIC
AND POWER COMPANY'S APPLICATION FOR APPROVAL
TO CONSTRUCT A COAL-FIRED ELECTRIC GENERATING
FACILITY IN WISE COUNTY, VIRGINIA, AND FOR
APPROVAL OF A COST RECOVERY RIDER
CASE NO. PUE-2007-00066

On July 13, 2007, Virginia Electric and Power Company ("Virginia Power" or "Company") filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity to construct and operate what the Company describes as a carbon capture compatible, clean-coal

powered electric generation facility in Wise County, Virginia, under §§ 56-585.1, 56-580 D, and 56-46.1 of the Code of Virginia ("Code"). The proposed facility will produce 585 megawatts ("MW") of generating capacity and will cost approximately \$1.62 billion, including the interconnection facilities necessary to interconnect the plant to PJM Interconnection, LLC. The proposed in-service date of the facility is 2012.

The specific configuration of the facility will consist of two circulating fluidized bed ("CFB") boilers supplying steam to a single steam generator. The boilers will be equipped with post-combustion dry polishing scrubbers, selective non-catalytic reduction for nitrogen oxide control, and fabric filters for particulate and mercury control. The application represents that CFB technology, combined with post-combustion controls, has low emissions of sulfur dioxide, nitrogen oxide, particulate matter and mercury.

According to the application, the Company anticipates that fuel supply for the generating facility will consist primarily of run-of-mine coal from various mines in the coalfield region of Virginia. The CFB technology will also reportedly allow for the supplemental use of opportunity fuels such as waste coal and biomass (wood waste) for up to 20% of the facility's output. The Company's application further states that "[r]enewable fuel use will lower emission levels and the consuming of waste coal will result in the environmental benefit of removing potential acid mine run-off source into local streams and rivers."

In order to proceed with the construction of the proposed generating facility, the Company requests that the Commission grant it a certificate of public convenience and necessity authorizing the construction and operation of the facility pursuant to §§ 56-585.1, 56-580 D and 56-46.1 of the Code. The Company's application alleges the proposed generating facility is required by the public convenience and necessity and is in the public interest because the facility will enable the Company to provide customers with a reliable and adequate supply of electricity and the facility will not have a material impact upon the reliability of electric service provided by any regulated utility. The application further alleges that the proposed facility will help the Company meet its projected native load requirements and will promote economic development in southwest Virginia.

The Company also requests that the Commission approve its proposed Rider S, which will allow the Company to recover an

allowance for funds used during construction ("AFUDC"), planning, development and construction costs, and infrastructure costs associated with its proposed coal-fired generating facility. The AFUDC recovered through Rider S will include financing costs accrued since the inception of the project through December 31, 2008 - the end of the Virginia Power's capped rate period. The Company proposes a return on equity rate of 13.75% for purposes of calculating its AFUDC, which consists of an 11.75% return on equity determined by the Company using the method prescribed by § 56-585.1 A 2 of the Code, plus the additional 200 basis point incentive premium granted by § 56-585.1 A 6 of the Code. The Company's proposed Rider S would also allow the Company to recover, effective January 1, 2009, a return on the Company's projected construction work in progress ("CWIP") expected to be incurred during calendar year 2009.

The Company also proposes that a 13.75% return on equity be applied on the Company's plant investment during the first 20 years of the facility's service life as authorized by § 56-585.1 A 6 of the Code. All costs associated with the construction of facility, other than AFUDC and a return on CWIP, will be recovered only when the plant is placed in service.

Finally, the Company requests a Commission declaration that the Competitive Bidding Rules at 20 VAC 5-301-10 *et seq.* ("Bidding Rules") have no application to the proposed generating facility or, in the alternative, that the Commission grant it exemptions from the Bidding Rules.

A copy of the application and the Commission's Order for Notice and Hearing, as well as other documents now or hereafter filed in this matter, shall be available for public inspection in the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. A copy of the application also may be obtained by requesting a copy from counsel for the Company, Edward L. Flippen, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. In addition, copies of the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

A public hearing shall be convened on January 8, 2008, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence in this docket. Any person not participating as a respondent as provided for below may give oral testimony concerning this case as a public witness at the hearing. Public witnesses desiring to make statements at the public hearing need only appear in the Commission's Second Floor Courtroom in the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

Any interested person may participate as a respondent in this proceeding by filing, on or before October 1, 2007, an original and fifteen (15) copies of a notice of participation with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of the notice of participation on counsel to the Company at the address set forth above. Pursuant to Rule 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a precise statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Interested parties shall refer in all filed papers to Case No. PUE-2007-00066. Interested persons should obtain a copy of the Commission's Order for Notice and Hearing for additional information about participation as a respondent.

On or before December 14, 2007, any interested person may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments in this proceeding and shall simultaneously serve a copy on counsel to the Company at the address set forth above. Any person desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

VIRGINIA ELECTRIC AND POWER COMPANY

(13) On or before September 10, 2007, the Company shall forthwith serve a copy of its application and this Order for Notice and Hearing on the Chairman of the Board of Supervisors and county attorney of each county and on the Mayor or Manager of every city and town (or on

equivalent officials in counties, towns, and cities having alternate forms of government) in which the Company provides service. Service shall be made by personal delivery or by first-class mail, postage prepaid, to the customary place of business or residence of the person served.

(14) On or before September 24, 2007, the Company shall file with the Clerk of the Commission proof of the notice required in Ordering Paragraphs (12) and (13).

(15) The Commission's Rules of Practice and Procedure, 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: (i) answers and objections shall be served within ten (10) business days after receipt of interrogatories or requests for production of documents; and (ii) responses to any motions seeking a ruling on the validity of any objections shall be filed within five (5) business days of receipt of the motion.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Karen L. Bell, Esquire, Dominion Resources Services, 120 Tredegar Street, Richmond, Virginia 23219; Edward L. Flippen, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; James C. Roberts, Esquire, Troutman Sanders LLP, P.O. Box 1122, Richmond, Virginia 23218-1122; C. Meade Browder, Jr., Senior Assistant Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23229; and to the Commission's Office of General Counsel and Divisions of Energy Regulation, Economics and Finance, and Public Utility Accounting.